

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rule making related to OSHA standards and revocation of construction contractor registrations and providing an opportunity for public comment

The Labor Commissioner hereby proposes to amend Chapter 1, “Description of Organization and Procedures Before the Division,” Chapter 3, “Posting, Inspections, Citations and Proposed Penalties,” Chapter 4, “Recording and Reporting Occupational Injuries and Illnesses,” Chapter 10, “General Industry Safety and Health Rules,” Chapter 26, “Construction Safety and Health Rules,” Chapter 32, “Child Labor,” and Chapter 150, “Construction Contractor Registration,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 17A and sections 88.5, 91C.6 and 92.21.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 88, 91C and 92.

Purpose and Summary

Item 1 proposes to remove obsolete and unnecessary language. Item 2 proposes to adopt new language inadvertently left out when the new Occupational Safety and Health Administration (OSHA) civil penalty rules were adopted.

Items 3, 4, and 5 propose to adopt by reference changes to the federal occupational safety and health standards. The Labor Commissioner is required to adopt these changes. On May 14, 2019, the federal Occupational Safety and Health Administration published numerous standard changes that were designed to correct confusing, outdated, duplicative, or inconsistent federal standards. The changes include clarifying when an employer must record hearing loss; removing periodic chest X-ray requirements from the standards for inorganic arsenic, coke oven emissions, and acrylonitrile; giving employers more flexibility for how to store chest X-rays; updating the construction standard for medical services due to changes in 911 technology; removing 19 requirements for employers to store employees’ social security numbers; eliminating obsolete and redundant language from numerous construction standards; changing the language in certain medical questionnaires; excluding certain residential construction projects from requirements for safe storage of building materials and equipment; and amending provisions concerning rollover protective structures for construction.

Item 6 proposes a new definition of “willfully volunteering” to clarify changes to the child labor law as set forth in 2019 Iowa Acts, Senate File 337. Items 7 and 13 update implementation sentences. Items 8 through 12 propose changes to the procedural rules for revocation of construction contractor registrations. These changes are designed for clarity and to better align the administrative rules with statutory authority.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1 or 5.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on July 23, 2019. Comments should be directed to:

Kathleen Uehling
Labor Services Division
150 Des Moines Street
Des Moines, Iowa 50319
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

July 29, 2019
1:30 p.m.

150 Des Moines St.
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 875—1.65(17A) as follows:

875—1.65(17A) Scope and applicability. This division applies to contested case proceedings conducted by the division of labor services. Rules of the employment appeal board are applicable for some contested cases regarding boiler safety, ~~elevator safety, and~~ occupational safety and health, ~~inspections and contractor registration investigations.~~

ITEM 2. Adopt the following new paragraph **3.11(1)“f”**:

f. Posting, reporting, or record-keeping violation. The penalty for each posting, reporting, or record-keeping violation under Iowa Code section 88.14(9) shall not exceed \$13,260.

ITEM 3. Adopt the following new paragraph **4.3(1)“i”**:

i. 84 Fed. Reg. 21457 (May 14, 2019)

ITEM 4. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
84 Fed. Reg. 21457 (May 14, 2019)

ITEM 5. Amend rule **875—26.1(88)** by inserting the following at the end thereof:
84 Fed. Reg. 21574 (May 14, 2019)

ITEM 6. Adopt the following **new** definition of “Willfully volunteering” in rule **875—32.1(92)**:
“*Willfully volunteering*” means performing service for a charitable or public purpose without promise, expectation, or receipt of compensation. A child shall be considered a volunteer only if services are offered freely and without direct or implied pressure or coercion from an employer. A child shall not be considered a volunteer if the child is otherwise employed by the same charitable or public organization to perform the same type of services as those for which the child proposes to volunteer. A child shall not be considered a volunteer while working in commercial activities for a nonprofit organization.

ITEM 7. Amend rule **875—32.1(92)**, implementation sentence, as follows:
This rule is intended to implement Iowa Code chapter 92 as amended by ~~2015 Iowa Acts, House File 397~~ 2019 Iowa Acts, Senate File 337.

ITEM 8. Amend subrules 150.11(2) and 150.11(3) as follows:
150.11(2) Notice of revocation. The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding ~~hearing conducted in accordance with Iowa Code chapter 17A~~ interview.
150.11(3) ~~Hearing~~ Fact-finding interview. The purpose of the fact-finding ~~hearing~~ interview is to ensure the contractor is not in compliance before the registration is revoked. All ~~hearings~~ fact-finding interviews shall be held in the offices of the division. A telephone interview may be conducted upon request.

ITEM 9. Rescind and reserve subrule **150.11(4)**.

ITEM 10. Amend subrule 150.11(5) as follows:
150.11(5) Decision. The commissioner shall serve the decision of the fact-finding interview on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall ~~send the decision to the address by first-class mail~~ serve the decision by other service as permitted in the Iowa Rules of Civil Procedure.

ITEM 11. Rescind and reserve subrule **150.11(7)**.

ITEM 12. Amend subrules 150.11(8) and 150.11(9) as follows:
150.11(8) ~~Appeal~~ Notice of contest. The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest ~~of decision~~. The notice of contest shall be filed with the commissioner, who shall forward it to the employment appeal board.
150.11(9) ~~Appeal~~ Notice of contest procedures. The rules of procedure of the employment appeal board shall apply to ~~appealed decisions~~ notices of contest.

ITEM 13. Amend **875—Chapter 150**, implementation sentence, as follows:
These rules are intended to implement Iowa Code chapter 91C ~~as amended by 2010 Iowa Acts, House File 2522~~.